IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1 **FAO NO.171 OF 1991**
DATE OF DECISION: 05-07-2006

Sanjeev Kumar, son of Ramesh Chander, Resident of House No.747, Patel Nagar, Ludhiana.

.....Appellant

VERSUS

1.Des Raj, son of Sh.Nanak Chand, Resident of Village and Post Officer Beeru, Tehsil Palampur, District Kangra (H.P.) at present employed with Ranjit Goods Carrier, G.T.Road, Khanna, District Ludhiana.

2.Sh.Kesar Singh, son of Sh.Dal Singh owner of truck No.1465, C/o Ranjit Goods Carrier, G.T. Road, Khanna, District Ludhiana.

3.The New India Assurance Company Limited, Khanna, District Ludhiana through its Branch Manager.

.....Respondents

2 **FAO NO.172 OF 1991**

Parveen Kumar, son of Shri Dharam Pal, Resident of House No.2007/B, Indra Puri, Tejpur Road, Ludhiana.

.....Appellant

VERSUS

1.Des Raj, son of Sh.Nanak Chand, Resident of Village and Post Officer Beeru, Tehsil Palampur, District Kangra (H.P.) at present employed with Ranjit Goods Carrier, G.T.Road, Khanna, District Ludhiana.

2.Sh.Kesar Singh, son of Sh.Dal Singh owner of truck No.1465, C/o Ranjit Goods Carrier, G.T. Road, Khanna, District Ludhiana.

3.The New India Assurance Company Limited, Khanna, District Ludhiana through its Branch Manager.

.....Respondents

3 **FAO NO.1024 OF 1991**

Ramesh Kumar, son of Sh.Gurdas Ram, Resident of House No.2254, Mohalla Jagdish Pura, Tejpura Road, Ludhiana.

.....Appellant

VERSUS

1.Des Raj, son of Sh.Nanak Chand, Resident of Village and Post Officer Beeru, Tehsil Palampur, District Kangra (H.P.) at present employed with Ranjit Goods Carrier, G.T.Road, Khanna, District Ludhiana.

2.Sh.Kesar Singh, son of Sh.Dal Singh owner of truck No.1465, C/o Ranjit Goods Carrier, G.T. Road, Khanna, District Ludhiana.

3.The New India Assurance Company Limited, Khanna, District Ludhiana through its Branch Manager.

.....Respondents

4 **FAO NO.261 OF 1991**

Chanan Singh, son of Sh.Assa Singh, Resident of House No.2002, Indra Puri,Tejpura Road, Ludhiana.

.....Appellant

VERSUS

1.Des Raj, son of Sh.Nanak Chand, Resident of Village and Post Officer Beeru, Tehsil Palampur, District Kangra (H.P.) at present employed with Ranjit Goods Carrier, G.T.Road, Khanna, District Ludhiana.

2.Sh.Kesar Singh, son of Sh.Dal Singh owner of truck No.1465, C/o Ranjit Goods Carrier, G.T. Road, Khanna, District Ludhiana.

3.The New India Assurance Company Limited, Khanna, District Ludhiana through its Branch Manager.

.....Respondents

5 **FAO NO.169 OF 1991**

Surjit Singh, son ofRai Singh, Resident of House No.2007/B,Indra Puri, Tejpura Road, Ludhiana.

.....Appellant

VERSUS

1.Des Raj, son of Sh.Nanak Chand, Resident of Village and Post Officer Beeru, Tehsil Palampur, District Kangra (H.P.) at present employed with Ranjit Goods Carrier, G.T.Road, Khanna, District Ludhiana.

2.Sh.Kesar Singh, son of Sh.Dal Singh owner of truck No.1465, C/o Ranjit Goods Carrier, G.T. Road, Khanna, District Ludhiana.

3.The New India Assurance Company Limited, Khanna, District Ludhiana through its Branch Manager.

.....Respondents

6 **FAO NO.170 OF 1991**

Balbir Singh, son of Rai Singh, Resident of House No.2007/B, Indra Puri, Tejpura Road, Ludhiana.

.....Appellant

VERSUS

1.Des Raj, son of Sh.Nanak Chand, Resident of Village and Post Officer Beeru, Tehsil Palampur, District Kangra (H.P.) at present employed with Ranjit Goods Carrier, G.T.Road, Khanna, District Ludhiana.

2.Sh.Kesar Singh, son of Sh.Dal Singh owner of truck No.1465, C/o Ranjit Goods Carrier, G.T. Road, Khanna, District Ludhiana.

3.The New India Assurance Company Limited, Khanna, District Ludhiana through its Branch Manager.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.KG Chaudhary,Advocate
for the appellants.

Mr.SS Salar,Advocate
for the respondents.

JUDGMENT

This is a set of six FAOs No.171, 172, 1024, 261, 169, 170 of 1991 which have arisen out of a common judgment dated 1-8-1990 rendered by the Motor Accident Claims Tribunal, Kapurthala vide which the claim petition filed by Sanjeev Kumar with respect to the damage of car was dismissed whereas the other FAOs have been filed for the enhancement of the compensation with respect to injuries sustained in the accident.

In brief, the common facts of the claim petition are that on 25-1-1988 Balbir Singh was driving a Car No.PUM 7464 belonging to Sanjeev Kumar- one of the petitioner, who was accompanied by Ramesh Kumar, Parveen Kumar, Chanan Singh and Surjeet Singh. They were coming from Vaishno Devi to Ludhiana. The car was being driven at a normal speed. When the car reached near village Mehtan, all of sudden, a truck bearing No.PCK 1465 came from Phgwara side being driven by respondent No.1 in a rash and negligent manner hit against the car by going wrong side. As a result of the accident, the car was badly damaged. Ramesh Kumar, Parveen Kumar, Balbir Singh, Chanan Singh and Surjit Singh suffered injuries. Sanjeev Kumar claimed compensation of Rs.50,000/- for the repair of the car whereas Balbir Singh-claimant claimed Rs.25,000/- for the injuries he sustained in the accident. Appellants-Parveen

Kumar, Chanan Singh, Ramesh Kumar and Surjit Singh claimed Rs.1,00,000/- (one lakh) as compensation with respect to the injuries they sustained in the aforesaid accident.

Upon notice, the respondents filed two sets of written statement. A joint written statement was filed by respondents No.1 and 2 in which they denied all the allegations made in the claim petition and pleaded that the present accident is the out come of rash and negligent driving of the driver of the car whereas respondent No.3 Insurance Company denied all the allegations made in this claim petition mentioned above.

All the claim petitions were consolidated and the following issues were framed:

1.Whether Des Raj caused injuries to Sanjeev Kumar, Balbir Singh, Parveen Kumar, Chanan Singh, Romesh Kumar and Surjit Singh by driving truck No.PCK 1465 rashly or negligently on 25-1-1988 in the area of Phagwara.

2.Whether the claimants are entitled to get compensation. If so what amount and from which of the respondents?OPP

3.Whether Des Raj was not having a valid license? OPR

4.Whether Des Raj was not having valid route permit and certificate of fitness. If so its effect?OPR

5.Relief."

Both the parties adduced evidence in support of their respective contentions made in their petitions with respect to the compensation claimed by them.

While disposing of the petition, the learned Tribunal returned the findings on Issue No.1 in favour of the claimants by holding that the present accident is the out come of rash driving of respondent No.1-driver of the truck No.PCK 1445 in which Parveen Kumar, Balbir Singh, Chanan Singh, Surjit Singh and Romesh Kumar were found injured in the accident.

While disposing of Issue No.2, the learned Tribunal did not grant any compensation to Sanjeev Kumar with respect to the car damaged in the accident for lack of evidence of ownership of the car as well as non-production of the mechanic, who has assessed the damage to the car No.PUM 7464.

Balbir Singh-PW9, who is stated to have suffered fracture on his left arm and his two legs were broken, was allowed compensation to the tune of Rs.2500/- in all.

As regards Parveen Kumar, who is stated to have suffered right wrist and right knee fracture was allowed compensation of Rs.2500/-.

Chanan Singh injured was allowed compensation of Rs.2000/-. Similarly, Romesh Kumar, who suffered fracture in the upper Jaw of the teeth was granted compensation of Rs.5000/-

Surjit Singh has also suffered fracture in his jaw. He was granted a lump sum compensation of Rs.2000/-.

Thus after awarding the compensation and holding the

Insurance Company responsible for this accident, finding on Issue No.2 was returned in favour of the complainant except for the petition filed by Sanjeev Kumar.

The Tribunal, however, observed that Des Raj was holding a valid driving license on the date of accident. No evidence was led on issue No.4. Therefore, the finding on this issue was decided against the respondents. As cumulative effect of findings on various issues, the claim petitions were allowed along with interest @ 12% per month from the date of the order till the realization of the amount. The claim petition of Sanjeev Kumar was dismissed.

Aggrieved by the inadequate compensation awarded to the claimant, the present FAOs were filed by the injured as well as by Sanjeev Kumar whose claim petition was dismissed by the Tribunal.

I have heard the learned counsel for the parties.

According to the learned counsel for Sanjeev Kumar, it has been contended that the Tribunal has committed a grave error in not awarding any compensation to the claimant with respect to the damage caused to his car No.PUM-7464.

The contention lacks merit. Except for the statement of the claimant, the claimant has not led any evidence to prove the extent of damage caused to his car by summoning a mechanic or an authorised dealer, who has affected repairs in the car. The claimant has also not produced any registration certificate so as to prove his ownership of the car. Thus, in the absence thereof, there is nothing on the record which would have entitled claimant-Sanjeev Kumar to claim compensation. The Tribunal has rightly dismissed the claim of Sanjeev Kumar with respect to the damage caused to

car No.PUM 7464 for lack of evidence.

Now coming to the compensation awarded to Balbir Singh PW-9-injured, he has stated that he has received fracture on his left arm, his two legs were broken and he has spent Rs.25,000/- or Rs.30,000/- on his treatment. There is a statement of Om Parkash PW7, who produced the medical expenses incurred by Balbir Singh, copy of which is Ex.P1 and receipt is Ex.P2 to P5.

From the perusal of the documents produced above, a sum of Rs.1255/- was shown to have been spent by Balbir Singh on his treatment. Dr.Subhash Chander Ahuja, who had examined Balbir Singh PW9 did not find any permanent disability suffered by him except some stiffness in the joints. He has been awarded compensation of Rs.2500/- for the medical expenses , diet etc. in lumpsum but the claimant has not been awarded any amount with respect to the pain and sufferings suffered by him during the period he remained under treatment. Therefore, he is allowed a sum of Rs.2,000/- under the heading of pain and suffering. He is shown to have been earning Rs.1500/- per month and remained under treatment for six weeks, therefore, he is awarded a sum of Rs.2,000/- as loss of earnings. Thus, the compensation with respect to Balbir Singh-injured is enhanced from Rs.2500/- to Rs.6500/-.

Now coming to Parveen Kumar-injured, he is stated to have suffered fracture in the right wrist and right knee. He has not suffered any kind of permanent disability as per the statement of Dr.Subhash Chander Ahuja PW5. Om Parkash PW-7 has, however, stated that Parveen Kumar has spent a sum of Rs.816/- on his medical treatment as is evident from Ex.P6 and receipts Ex.P7 to P13. He has not been awarded any

compensation for pain and suffering and loss of earnings, which is now enhanced to Rs.2000/- under the heading of pain and suffering and Rs.2000/- under the heading of loss of earning. Thus, the compensation payable to Parveen Kumar is enhanced to Rs.2500/- to Rs.6500/- in all which is just a fair compensation in the circumstances.

Now, coming to the case of Chanan Singh, he has been awarded a compensation of Rs.2000/- with respect to the injuries, which he received on his cheek, head and lips. He did not undergo any operation though suggested by the doctor. He further remained in the hospital from 25-1-1988 to 1-2-1988. According to Dr.Ashok Kumar Gupta, PW6, he has not suffered any kind of permanent disability. The learned Tribunal has not given any compensation to Chanan Singh with respect to the pain and suffering, which is now assessed as Rs.2000/- under the head of pain and suffering and loss of earning during the period he remained under treatment of Rs.2000/-. Thus, the compensation payable to Chanan Singh is enhanced from Rs.2000/- to Rs.6000 in all counts.

As regards, Ramesh Kumar-injured, he has suffered fracture mexilla (upper jaw) and is having artificial teeth. He has not lost any teeth except interdental wiring. At the same time he must have been chewing with difficulty during the period his fractured jaw was wired. He is, therefore, awarded a compensation of Rs.3000/-, under the heading of pain and suffering and Rs.2000/- on account of loss of earnings. Hence, his compensation is enhanced from Rs.5000/- to Rs.10,000/-.

As regards Surjit Singh, he was awarded a sum of Rs.2000/- in lumpsum as medical expenses but he has not been awarded any compensation with respect to pain and sufferings and loss of earning during

the time he remained under treatment. Dr.Ashok Kumar, PW6 has categorically stated that he has not suffered any kind of permanent disability. From the statement of Om Parkash-PW7, it is clear from the documents Ex.19 to P22 that Surjit Singh has spent Rs.450/- only as medical expenses. He is awarded a sum of Rs.2000/- under the heading of pain and suffering and Rs.2000/- as loss of earning. Thus, his compensation is enhanced from Rs.2000/- to Rs.6000/- in all.

In the light of above discussion, the above said FAO Nos.169, 170, 172, 261 and 1024 of 1991 are accepted. The order of Tribunal is modified to the extent with respect to the enhanced compensation awarded today. The FAO No.171 of 1991 filed by Sanjeev Kumar is dismissed.

These claim petitions remained pending for a period of 15 years before Hon'ble High Court. The bank rate of interest has since been reduced. The ends of justice would be met if the interest @ 6% over the enhanced amount is awarded to the claimants from the date of award passed by the Tribunal till its realization. In each FAO, the counsel fee is assessed @ Rs.110-, if certified.

(R S MADAN)
JUDGE

July 05, 2006
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